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Patent
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April 4, 2006

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Attn: Art Unit 3673
Primary Examiner Robert G. Santos

Re:

Application Serial No.:	**10/711,597**
Confirmation No.:	**5596**
Applicant:	**Susan Kirkwood**
	Title: Mobility Assistance Device
Docket No.:	**SK 1001R**

Sir:

Please find enclosed Applicant's Response to the Office Action dated March 7, 2006 for filing in the above case.

No fees are due with this response.

Respectfully,

Nancy L. Reeves
Reg. No. 46225

CERTIFICATE OF MAILING BY EXPRESS MAIL

I hereby certify that this document and the documents indicated as enclosed herewith are being deposited with the U.S. Postal Service as Express Mail Post Office to addressee in an envelope addressed to Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450 this 5th day of April, 2006.

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04-05-06

SK 1001R

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of **Susan Kirkwood**	)	
Application No.: **10/711,597**	)	Art Unit 3673
Confirmation No.: **5596**	)	
Filed: **September 28, 2004**	)	Primary Examiner Robert G. Santos
Title: **Mobility Assistance Device**	)	

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

Reconsideration and withdrawal of the restriction requirement dated March 7, 2006, is respectfully requested. Kindly enter Applicant's remarks herein without prejudice as follows:

Applicant Provisionally Elects With Traverse

In response to the Office Action dated March 7, 2006, requiring restriction election, Applicant provisionally elects with traverse Group I (claims 1-11, 20-22, and 25). Reconsideration and withdrawal of said restriction requirement is respectfully requested. As shown in more detail herein, the restriction requirement is without legal basis.

The Requirement is not legally proper because there is no serious burden

MPEP § 803 sets forth criteria for a proper restriction requirement. One of the criteria is that there must be a serious burden on the Examiner in order for restriction to be required. Conversely, if the search and examination of an entire application can be made without serious burden, then the Examiner must examine it on the merits.

Applicant respectfully submits that the requirement is not legally proper because the criterion for serious burden has not been met. No allegation has been made that the examination of all claims of the application would impose a serious burden on the Examiner. Many of the method of use claims in Group III include the apparatus of one or more Group I claims or the apparatus made by the method of one or more claims in Group II. Thus the search required to examine the Group III claims necessarily includes both the Group I and the Group II search. Similarly, many of the apparatus claims of Group I require an apparatus made using the method of one or more Group II claims. Thus the search required to examine the Group I claims necessarily includes the Group II search. Because the Groups are not independent, the search and examination requirement for all claims poses no greater burden on the Examiner than

examination of the claims of a single elected group. Thus the Applicant respectfully submits that the restriction requirement is not legally proper and should be withdrawn.

The Alleged Groups

Claims 1-25 are pending. The Action alleges three distinct Groups:

I. Claims 1-11, 20-22, and 25, drawn to an apparatus, classifiable in 5/81.1R.

II. Claims 12, 16-19, and 23, drawn to a method, classifiable in 528/99.

III. Claims 13-15, drawn to a method classifiable in class 414/921.

The Alleged Groups Are Not Distinct

The Action relies on MPEP § 806.05(f) to allege that the Groups I and II are distinct from each other and on MPEP § 806.05(h) to allege that Groups I and III are distinct from each other. The Action has not alleged that Group II is either distinct or independent from Group III. Thus the restriction requirement is incomplete and improper because, on their face, some of the claims in Group III use an apparatus which is made by the method of some of the claims in Group II.

With respect to the alleged distinctions between Group I and Group II, the Action alleged that the product as claimed can be made by another materially different process (MPEP § 806.05(f)), [such as] by "laminating a plurality of separate fabric pieces to form a multilayered device." Claim 12 describes an apparatus made by folding a single piece of fabric into layers and joining the edges of the multiple layers together. Applicant respectfully disagrees with the conclusory statement that this is a materially different process, and suggests that the difference

between these two processes is whether three or four edges require lamination (or joining), which is an immaterial difference.

The MPEP § 806.05 states that, "The burden is on the examiner to provide reasonable examples that recite *material differences*." The Office has not met the prerequisite criteria for insisting on restriction requirement because the example recited does not show evidence of a *materially different* process by which the product as claimed may be made, as is required.

With respect to the alleged distinctions between Group I and Group III, the Action alleged that the product as claimed can be used in another materially different process (MPEP § 806.05(h)), [such as] by "wrapping the product around a patient's wrists to serve as a restraint device." Claim 1 requires that "the fasteners [be] adapted to permit the releasable attachment of the first end to at least one of the second end and the center and to permit the releasable attachment of the second end to at least one of the first end and the center." This claim includes a product characterized by "a length which is adapted to permit it to be wrapped around two human ankles" which attaches the first end to the second end. A product designed to wrap around a pair of ankles, fastening together at the ends only, would be unsuitable as a wrist restraint because of the relatively loose manner in which it would necessarily be fastened around the wrists. This is particularly true with respect to claim 2, in which the fasteners are hook and loop tape. Even if it could be fastened tightly enough, the "restrained" individual could merely raise his or her wrists toward his or her face, using his or her teeth to grab one end of the hook and loop tape, and tug, releasing the "restraint." Applicant respectfully suggests that the example recited in the Action is not a reasonable use of the product as claimed.

MPEP § 806.05 states that "The burden is on the examiner to provide *reasonable* examples that recite material differences." The Office has not met the prerequisite criteria for insisting on restriction requirement because the example recited does not show evidence of a reasonable example materially *different* process for which the product as claimed may be used, as is required.

The Office has not met the prerequisite criteria for insisting on restriction requirement because the examples recited do not show evidence that the product (Group I) and process of use (Group III) or manufacture (Group II) are distinct, as is required. In addition, no allegation was made that the process of use (Group III) and manufacture (Group II) are distinct. In addition, not only must the inventions be distinct or independent, the examination of the application as a whole must also impose a serious burden before restriction is proper. MPEP § 803. The action did not allege such a burden. Therefore, it is respectfully requested that the restriction requirement be withdrawn.

Conclusion

The undersigned is willing to discuss any aspect of the application by telephone at the Office's convenience.

Respectfully submitted,

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